S.B.Civil writ Petition No.7620/2007
Inder Singh & Ors.
vs
Chairman & Managing Director, Jodhpur Vidhyut Vitaran Nitam Ltd., & Ors.

Date of order : 21.11.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.Arjun Singh, for the petitioners.

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Heard learned counsel for the petitioners.

The present writ petition has been preferred against the order of the trial court dated 20th July, 2007 by which the objection submitted by the petitioners-plaintiffs against the Commissioner's report was dismissed by the trial court.

It appears that in the proceedings for grant of ad interim relief under Order 39 Rule 1 and 2 CPC, the Commissioner was appointed by the court below on the request of both the parties. The petitioners' objection is that Commissioner should have inspected the site on the same day as per the direction of the trail court, but the learned Commissioner insepcted the site after four days. It is also submitted that respondent no.5 was not served with the notice of the injunction application or of the suit, yet his presence was recorded by the Commissioner. It is also submitted that the Commissioner prepared the report in absence of the petitioner.

After going through the reasons given by the trial court, I do not find any reason for interference in such an order where the objection of the petitioners was rejected by the trial court as the petitioners can prove their case through their own evidence and the Commissioner report is not conclusive proof. Apart from above, in case, the grievance of the petitioners survives after the order of the trail court finally passed on injunction application, then the petitioners have remedy to challenge the order dated 20th July, 2007 in appeal. However, in the facts of the case,I do not find any reason for interference in the impugned order by exercising power under Article 227 of the Constitution of India.

Hence, the writ petition of the petitioners is dismissed having no merit.

(PRAKASH TATIA), J.

c.p.goyal/-